

**CERTIFIED TRANSLATION**

Extract from “Gældsbrevsloven med kommentarer” (The Danish Debt Instruments Act with commentaries)

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## **1. Overview**

The rule in section 27 is the sharpest exponent in chapter 3 for the basic view that the debtor's obligation cannot be increased by the transfer of a simple instrument of debt (unsecured claim). In general, section 27 may be deviated from by agreement between the debtor and the transferor/acquirer, just as other matters may follow from »special legal rules«. It also follows from section 27 that the right to a simple instrument of debt cannot be forfeited by turnover-extinguishment, with reservation to a holder's declaration and »special legal rules«. Thus, the rule in section 27 covers all the matters that are regulated for turnover instrument of debts in sections 14-17. In an international transfer constellation, it may occur that a Danish court under Danish private international law must apply the rules in a foreign legal system that correspond to section 27, cf. article 7 in the commentaries to section 26.

## **2. Transfer**

Section 27 only covers transfer. The norm that the acquirer cannot have a better right than the transferor is, however, an expression of a general legal principle, cf. Peter Mortensen: Introduction to the law of property, p. 45. The same thus applies to other forms of transfer, e.g. transfer by inheritance, cf. Bo von Eyben, Peter Mortensen and Ivan Sørensen: Textbook in the law of obligations II p. 65, Bernhard Gomard: The law of obligations 3. Partly. 67 and Henry Ussing: The law of obligations – the general part p. 211 and - expressed differently - Preben Lyngsø: The Danish Debt Instruments Act

p. 181 and forward. Transfer by debt enforcement may, however, by virtue of the act of perfection in section 31, result in extinguishment of rights, cf. article 3 in the commentaries to this rule. In relation to the main rule in section 27, it is by definition irrelevant whether a transfer is valid or not. In the case of possible objection or extinguishment of rights under »special legal rules« (see article 5 and 6), it is a condition that the transfer is valid.

## Uddrag fra ”Gældsbrevsloven med kommentarer”

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### 1. Oversigt

Reglen i § 27 er den skarpeste eksponent i kapitel 3 for det grundsynspunkt, at skyldnerens forpligtelse ikke kan forøges ved overdragelse af et simpelt gældsbrev (en simpel fordring). Som udgangspunkt kan § 27 fraviges ved aftale mellem skyldneren og overdrageren/erhververen, ligesom andet kan følge af »særlige retsregler«. Af § 27 følger det tillige, at retten til et simpelt gældsbrev med forbehold af indehavererklæring herom og »særlige retsregler« ikke kan fortabes ved omsætningseksstinktion. Reglen i § 27 dækker således alle de forhold, der for omsætningsgældsbreve er reguleret af reglerne i §§ 14-17. I en international overdragelseskonstellation kan det forekomme, at en dansk domstol efter dansk international privatret skal anvende de regler i et fremmed retssystem, som svarer til § 27, jf. punkt 7 i kommentaren til § 26.

### 2. Overdragelse

Bestemmelsen i § 27 omfatter kun overdragelse. Den norm, at erhververen ikke kan få bedre ret end overdrageren, er imidlertid udtryk for en almindelig retsgrundsætning, jf. Peter Mortensen: Indledning til tingsretten s. 45. Det samme gælder således ved andre former for overførelse, f.eks. overførelse ved arv, jf. Bo von Eyben, Peter Mortensen og Ivan Sørensen: Lærebog i obligationsret II s. 65, Bernhard Gomard: Obligationsret 3. Dels. 67 og Henry Ussing: Obligationsretten Almindelig Del s. 211 samt - udtrykt anderledes - Preben Lyngsø: Gældsbrevsloven s. 181 f. Overførelse ved kreditorforfølgning vil dog i kraft af sikringsaktsreglen i § 31 kunne resultere i rettighedseksstinktion, jf. punkt 3 i kommentaren til denne regel. I relation til

hovedreglen i § 27 er det per definition ligegyldigt, om en overdragelse er gyldig eller ej. Hvor det drejer sig om mulig indsigelses eller rettighedseksstinktion i medfør af »særlige retsregler« (jf. punkt 5 og punkt 6), er det derimod en betingelse, at overdragelsen er gyldig.

I, the undersigned, Jennie Gottfredsen, certify that I am fluent in both the English and Danish languages and that the preceding text in the English language is to the best of my knowledge and belief a true and faithful translation of the attached extract from the Danish textbook Gældsbrevsloven med kommentarer, ISBN 978-87-619-1826-0 in the Danish language.

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